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SUPREME COURT, U.S.

No. 97-1818

In The

Supreme Court of the United States

October Term, 1997

GLORIA GISCH,

Petitioner,

vs.

EXTENDACARE HEALTH SYSTEMS, INC. and T² MEDICAL, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals For The Fifth District Of Texas At Dallas

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW (RESTATED)

1. Premised solely on one incident of disparate treatment (pregnancy discrimination), the trial court granted Petitioner injunctive relief. The Texas Court of Appeals vacated the injunction because of Petitioner's failure to adduce any evidence of a history of discriminatory practices on the part of Respondents, any indication of future non-compliance with the law, or any need to fashion injunctive relief to make Petitioner whole. Should this Court grant review where Petitioner would not reap any personal benefit even if the injunction were reinstated?

2. Whether the Texas Court of Appeals properly determined that Petitioner was not a prevailing party under 42 U.S.C. § 2000e-5(k) and therefore not entitled to an award of attorneys' fees and costs, where Petitioner failed to obtain any affirmative relief on her Title VII claim that would materially alter the legal relationship between the parties or directly benefit the Petitioner.

3. Whether the Texas Court of Appeals applied the correct standard of review in determining that the Trial Court improperly issued a permanent injunction against Respondents.

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STATEMENT OF THE CASE

Petitioner Gloria Gisch ("Petitioner") was hired by Respondent Extendacare Health Systems, Inc. in January of 1987 to work as a pharmacist. In mid-1989, she became director of operations and was allowed to purchase a 9.9% interest in Extendacare for approximately $8000.00. In November 1990, Respondent T² Medical Services, Inc. purchased Extendacare. Petitioner received $1.5 million for her interest as a result of this sale. During the course of negotiations toward the sale, Petitioner assured T² that she would continue working at the Extendacare facility as Operations Manager and that would devote as much time and energy to her job with T² as necessary. In fact, on November 30, 1990 Petitioner entered into a two year written employment agreement with T² and Extendacare. In this agreement, she agreed to devote her time, energy, and still to perform her duties as Operations Manager for Extendacare. In return, Respondents agreed to pay Petitioner an annual salary of $75,000.00.

However, during the months immediately prior to the sale, Petitioner had been feeling ill and in fact became so concerned with her physical condition that she asked a co-worker to run tests to see whether she had Lyme

disease and/or was pregnant. Shortly before the date of the sale of Extendacare to T², Petitioner discovered that she was pregnant. However, she did not disclose her medical problems or her pregnancy to her partners at Extendacare or to anyone at T² until immediately after the sale closed on November 30, 1990. Beginning December 5, 1990 and thereafter, Appellee did not report to work at Extendacare.

On January 10, 1991, after not reporting to work in over five weeks, Petitioner met with Paul Kolander, her immediate supervisor. Although there was conflicting testimony regarding what occurred at this meeting, Petitioner testified that Mr. Kolander gave her the option of resigning or being terminated from her position at Extendacare and that, by reason of her refusal to resign, she was terminated. Only hours after this meeting, however, Petitioner discussed her situation with Jeffrey Muir, general counsel of T², who told her that it was not his understanding or the Company's intent that she was to have been terminated. By letter dated January 11, 1991, Mr. Muir assured Petitioner that she was still regarded as an employee and that she would continue to receive her salary and benefits.

Petitioner did not return to work after her January 10 conversation with Muir or submit

medical documentation justifying her continued her absence from work. By letter dated February 11, 1991, Extendacare asked Petitioner to either report for work by February 13, 1991 or provide medical documentation affirming that she was physically unable to work. It is undisputed that Petitioner had been fully released by her obstetrician to return to work at this time. However, Petitioner did not report to work by February 13, 1991 and did not provide any medical documentation to Extendacare or T[2]. Assuming that Petitioner had resigned by reason of her failure to report to work or to provide the requested medical documentation, Respondents terminated Petitioner's employment status.

Petitioner initially filed suit against Respondents for pregnancy discrimination under the Texas Commission on Human Rights Act ("TCHRA"), negligent infliction of emotional distress, intentional infliction of emotional distress, breach of duty of good faith and fair dealing, and breach of contract. Petitioner then added her supervisor, Christine Burns, as a defendant, and sued her individually for breach of contract, detrimental reliance, fraud, intentional infliction of emotional distress, and breach of fiduciary duty. Petitioner later amended her suit to add causes of action against Respondents for

retaliation under Title VII of the Civil Rights Act of 1964, and for invasion of privacy. Respondents were granted summary judgment on Petitioner's causes of action for intentional infliction of emotional distress, breach of duty of good faith and fair dealing, and retaliation. Ms. Burns was granted summary judgment on all the claims Petitioner asserted against her. During the course of the litigation, Petitioner dropped her claims for negligent infliction of emotional distress and false light invasion of privacy.

Petitioner's remaining claims were tried to a jury, which returned a verdict *against* Petitioner on her breach of contract claim and her fraudulent inducement claim. The jury found in favor of Respondents on their breach of contract claim against Petitioner but awarded no damages. Similarly, the jury found that Petitioner had been terminated because of pregnancy but awarded no damages to Petitioner. Finally, the jury found that Respondents had invaded Petitioner's privacy by reviewing her medical records and awarded damages of $9,530.00. Even though Petitioner obtained no affirmative relief on her Title VII claim, the Trial Court then awarded Petitioner $250,000.00 in attorney's fees as a prevailing party under Title VII and the TCHRA. In addition, although there was no evidence of any current

discriminatory practice or policy followed by Respondents or any past effects of discrimination to remedy, the Trial Court directed Respondents to "institute and carry out policies and practices to eradicate the effects of its past and present unlawful employment practices." (Petitioner's Appendix B-3).

On appeal to the Court of Appeals for the Fifth District of Texas, the Appellate Court properly reviewed the record and found that there was no evidence to support the issuance of injunctive relief and vacated that portion of the judgment. In the absence of any injunctive relief, any award of damages, or entry of any other relief under Title VII that materially altered the relationship between Petitioner and Respondents, the Appellate Court then correctly reasoned that Petitioner could not qualify for prevailing party status. Consequently, the Appellate Court vacated the disproportionately large award of attorneys' fees made by the trial court. Petitioner's subsequent attempts to reverse the decision of the appeals courts were justifiably rebuffed by the Texas Supreme Court.

Petitioner now seeks a writ of certiorari solely for the purpose of regaining an obscenely large fee award for her attorneys who

spent literally thousands of hours in order to obtain a judgment of $9,530.00 under a state law claim for invasion of privacy, a cause of action which does not allow for recovery of attorneys' fees under Texas law. For the reasons set forth below, Respondents submit that the Appellate Court correctly determined that Petitioner's "success" on the merits of her Title VII claim—a declaration that one incident of disparate treatment occurred—does not entitle her to injunctive relief, prevailing party status or any award of attorney's fees under Title VII.

ARGUMENT AND AUTHORITIES

REASONS FOR DENYING THE PETITION

A. THE COURT SHOULD NOT GRANT A WRIT OF CERTIORARI BECAUSE THE TEXAS COURT OF APPEALS PROPERLY DETERMINED THAT PETITIONER WAS NOT ENTITLED TO INJUNCTIVE RELIEF WHERE SHE FAILED TO ADDUCE (1) ANY EVIDENCE OF A HISTORY OF DISCRIMINATORY PRACTICES, (2) ANY EVIDENCE THAT FUTURE DISCRIMINATION WAS LIKELY, OR (3) ANY NEED TO FASHION INJUNCTIVE RELIEF TO MAKE PETITIONER WHOLE, FOLLOWING A SINGLE INCIDENT OF DISPARATE TREATMENT ON THE PART OF RESPONDENTS.

Petitioner's first and primary justification for this Court to grant her request for a writ of certiorari is the assertion that the Texas Court of Appeals improperly vacated the injunctive relief issued by the Trial Court that Respondents "institute and carry out policies and practices which will eradicate the effects of its past and present unlawful employment practices." (Petitioner's Appendix B-3).

This assertion of error is premised upon the mistaken belief that Title VII *mandates* a grant of injunctive relief and the trial court has *no discretion* to deny injunctive relief when the Title VII plaintiff proves a violation of the statute. However, this interpretation of the law finds no support in the language of the statute or, for that matter, in the authorities cited in the petition for writ of certiorari.

The remedial provisions of Title VII provide that if a court finds that an employer has intentionally engaged in an unlawful employment practice or is engaging in such practices, "the court *may* enjoin the respondent from *engaging* in such unlawful employment practice, and order such affirmative action as may be appropriate. . . ." 42 U.S.C. § 2000e-5(g)(1) (emphasis added). The statute does not mandate injunctive relief, nor does it provide

trial courts with any guidelines to determine when injunctive relief should be employed. Furthermore, nothing in the statutory language of Title VII suggests that appellate courts are prohibited from establishing guidelines or criteria to assist trial courts in determining when injunctive relief is appropriately granted. In this case, the Texas Appellate Court conducted an extensive analysis of the authorities on point, including both the cases cited by Respondents "indicating injunctive relief is discretionary and dependent upon several factors" and the cases cited by Petitioner that purport to mandate injunctive relief once there is a finding of discrimination. (Petitioner's Appendix A-9). The Appellate Court detected "a common thread" among these cases concerning the appropriateness of injunctive relief:

> If there is evidence of past discrimination and the record reveals the probability of future discriminatory practices, the trial court must fashion injunctive relief for the benefit of anyone victimized by the discriminatory practice. If there is no evidence of future noncompliance with the law, however, injunctive relief may not be necessary to make the plaintiff

> whole or benefit incidental nonparties. If the plaintiff has not requested any prospective relief such as reinstatement, injunctive relief may not be necessary to make the victim whole. For nonparties to benefit from injunctive relief, the injunction should benefit the plaintiff, address past discriminatory practices, or address probable future noncompliance with the law.

(Petitioner's Appendix A-13–A-14)(citations omitted). The court then properly reviewed the record for evidence to support the issuance of an injunction under any of these factors and found none.

Specifically, the record failed to establish a past record or history of discrimination by Respondents against pregnant women. (Petitioner's Appendix A-15). Likewise, nothing in the record suggested that Respondents were likely to discriminate against pregnant women in the future. Indeed, the record established that Christine Burns, who Petitioner sued in her individual capacity, continued to work for Respondents while she was eight months pregnant. *Id.* Since there was no danger of any continuing or probable future

violation, injunctive relief was not necessary to the fair resolution of the conflict. *Id.*

The Appellate Court also determined that the injunctive relief imposed by the Trial Court would benefit neither plaintiff nor nonparties. First, Plaintiff would not benefit because she no longer worked for Respondents and had abandoned her claim for reinstatement. Second, nonparties would receive no benefit because there was no evidence in the record that Respondents had a policy or practice of discriminating against pregnant women. (Petitioner's Appendix A-15). Accordingly, the Appellate Court had no other recourse than to vacate the injunctive relief imposed by the Trial Court.

Respondents do not contest Petitioner's assertions regarding the broad discretionary powers of trial courts to fashion injunctive or other equitable relief in Title VII cases. There is a significant distinction, however, between exercising discretion based upon evidence establishing the need for injunctive relief and the arbitrary imposition of injunctive relief. In this case, the Trial Court ordered Respondents to "institute and carry out policies and practices which will eradicate the effects of its past and present unlawful employment practices" even though the

record contained no evidence of any continuing effects of past discrimination or the existence of any current discriminatory policies or practices. Under these circumstances, the Appellate Court properly vacated the Trial Court's arbitrary grant of injunctive relief.

Although Petitioner suggests that the Court of Appeals' decision to vacate the grant of injunctive relief is somehow contrary to established precedent, the decision is actually perfectly consistent with the prior decisions of this Court and the lower courts. For example, this Court has stated that the purpose of an injunction is to prevent future illegal acts.[1] Where there is no reasonable expectation that the discriminatory conduct will recur, there is no need for nor entitlement to injunctive relief.[2] Furthermore, courts should deny injunctive relief in individual disparate treatment cases if the plaintiff fails to offer credible evidence of broad-based, pervasive or continuing discrimination in the workplace.[3]

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[1]*United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953).

[2]*Valdez v. Church's Fried Chicken, Inc.*, 628 F. Supp. 596, 621 (W.D.Tex. 1988).

[3]*See, e.g., Griffith v. State of Colorado, Div. of Youth Services*, 17 F.3d 1323, 1330 (10th Cir. 1994); *Walton v. Cowin Equipment Co.*, 774 F.Supp. 1343, 1349

Finally, courts have repeatedly held that a request for injunctive relief should be denied as moot where the plaintiff no longer works for the defendant, does not seek reinstatement, and has failed to show any way in which she would personally benefit from the requested relief, because the class benefitted by the injunction must include the plaintiff. Otherwise, the injunctive relief is unnecessary to the "just disposition of the action."[4] Indeed, it is well-established that "past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects."[5] All of

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(M.D.Fla. 1990), *aff'd*, 974 F.2d 1348 (11th Cir. 1992); *Spencer v. General Electric Co.*, 894 F.2d 651, 660 (4th Cir. 1990).

[4]*Carmichael v. Birmingham Saw Works*, 738 F.2d 1126, 1136 (11th Cir. 1984). *See also, Meyer v. Brown & Root Construction Co.*, 661 F.2d 369, 372 (5th Cir. 1981); *Shiffman v. Cimarron Aircraft Corp*, 615 F.Supp. 382, 387 (W.D.Okla. 1985).

[5]*Armstrong v. Turner Industries, Inc.*, 1998 WL 241888, *6 n.24 (5th Cir. May 14, 1998), quoting *Luhan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992). *See also, City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983)("past wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy"); *Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corp.*, 28 F.3d 1268, 1272-74 (D.C.Cir. 1994)(employment testers lacked standing to pursue Title VII injunctive relief because

these legal principles support the Appellate Court's decision to vacate the injunctive relief imposed by the Trial Court.

Conversely, none of the authorities cited by Petitioner support the issuance of injunctive relief in factual situations similar to the one at bar. For example, in *James v. Stockham Valves and Fittings Co.*,[6] the appeals court held that injunctive relief was required because the record established that the employer continued to utilize discriminatory hiring and training practices such as educational and age requirements and aptitude tests which had not been validated.[7] Similarly, the record in *Gregory v. Williams*, in which a sheriff was determined to have refused to consider women for deputy positions, established that the sheriff's successor had continued the same practice.[8] Overall, there is complete lack of support for Petitioner's argument that injunctive relief is mandatory whenever a trial court sustains a jury finding

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they could not allege a likelihood of future violations by defendant).

[6]559 F.2d 310 (5th Cir. 1977).

[7]*Id.* at 335.

[8]871 F.2d 1239 (4th Cir. 1989).

of discrimination. On the contrary, because the appeals court correctly held that Petitioner failed to adduce any evidence to support a grant of injunctive relief, Petitioner's request for writ of certiorari should be denied.

B. THE COURT SHOULD NOT GRANT A WRIT OF CERTIORARI BECAUSE THE TEXAS COURT OF APPEALS PROPERLY CONCLUDED THAT PETITIONER WAS NOT A PREVAILING PARTY UNDER 42 U.S.C. § 2000E-5(k) AND THEREFORE WAS NOT ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS WHERE PETITIONER FAILED TO OBTAIN ANY AFFIRMATIVE RELIEF ON HER TITLE VII CLAIM THAT WOULD MATERIALLY ALTER THE LEGAL RELATIONSHIP BETWEEN THE PARTIES OR DIRECTLY BENEFIT THE PETITIONER.

1. Petitioner Was Not A Prevailing Party.

Only a prevailing party is entitled to an award of attorneys' fees or court costs.[9] The Supreme Court's decision in *Farrar v. Hobby* governs the issue of prevailing party status in employment discrimination cases.[10] Petitioner argues that *Farrar* is inapplicable because her

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[9]Tex. Lab. Code § 21.259; 42 U.S.C. § 2000e-5(k).

[10]506 U.S. 103, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992).

case involves a state cause of action and a Title VII claim, whereas the plaintiff in *Farrar* was awarded damages under 42 U.S.C. § 1988.[11] However, most of the cases Petitioner relies on to support her argument involved claims under 42 U.S.C. § 1988![12] Moreover, Petitioner is not able to cite any precedent that suggests that this Court's conclusion as to one civil rights provision regarding attorney's fees is not applicable to another.

The truth is that courts have routinely applied the standards set forth in *Farrar* in employment discrimination cases to determine whether a plaintiff is a prevailing party entitled to an award of attorneys' fees and to determine whether an award of attorneys' fees is reasonable.[13] Moreover, courts have used the

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[11]*See* Petitioner's Brief at 11.

[12]*See Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782, 109 S. Ct. 1486 (1989); *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933 (1983); *Heath v. Brown*, 807 F.2d 1229 (5th Cir. 1987); *Williams v. Thomas*, 692 F.2d 1032 (5th Cir. 1982), *cert. den.*, 462 U.S. 1133, 103 S. Ct. 3115 (1983); *Lund v. Affleck*, 587 F.2d 75 (1st Cir. 1978).

[13]*See Hanrahan v. Hampton*, 446 U.S. 754, 758 n.4, 100 S. Ct. 1987, 1989 n.4 (1980); *Quarantino v. Tiffany & Co.*, 129 F.3d 702, 706 (2nd Cir. 1997); *Pino v. Locascio*, 101 F.3d 235, 237 (2nd Cir. 1996); *Sheppard v. Riverview Nursing Ctr., Inc.*, 88 F.3d 1332, 1335-36 & n.3 (4th

standards in *Farrar* to determine prevailing party status and attorneys' fees in cases brought under Title IX,[14] the Individuals with Disabilities Education Act,[15] and the Americans with Disabilities Act.[16]

A plaintiff is considered a "prevailing party" only if: (1) the plaintiff obtains relief on the merits of her claim; (2) the relief materially alters the legal relationship between the parties by modifying the defendant's behavior; and (3) that relief directly benefits the plaintiff[17] (emphasis added). Under this test, Petitioner cannot be considered a prevailing party. Even if the Court of Appeals had not vacated the injunctive

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Cir.), *cert. denied*, 117 S. Ct. 483 (1996); *Griffith v. State of Colorado*, 17 F.3d 1323, 1328 (10th Cir. 1994); *DeGaetano v. Smith Barney, Inc.*, 983 F. Supp. 459, 465 (S.D.N.Y. 1997); *Morimanno v. Taco Bell*, 979 F. Supp. 791, 795 (N.D. Ind. 1997); *DiPietro v. Runyon*, 914 F. Supp. 714, 716 (D. Mass. 1996).

[14]*Pederson v. Louisiana Sate University*, 912 F. Supp. 892, 926 (M.D. La. 1996).

[15]*W.T. By Tatum v. Andalusia City Schools*, 977 F. Supp. 1437, 1442 (M.D. Ala. 1997).

[16]*Rice v. Genova Products, Inc.*, 978 F. Supp. 813, 823 (N.D. Ind. 1997).

[17]*Farrar*, 506 U.S. at 111-112, 113 S. Ct. at 573; *Martinez v. Wilson*, 32 F.3d 1415, 1422 (9th Cir. 1994).

relief, Petitioner did not receive any relief on the merits of her discrimination claim that materially altered the legal relationship between the parties by modifying Respondents' behavior in a way that directly benefitted Petitioner. This conclusion is even more apparent in light of the decision of the Court of Appeals to vacate the trial court's grant of injunctive relief.

A jury verdict or a trial court's finding that a defendant violated a plaintiff's civil rights, does not, in the absence of actual relief that benefits the plaintiff, render a plaintiff a prevailing party.[18] Because Petitioner was no longer employed by Respondents and did not seek reinstatement, the injunctive relief did not provide any material relief of direct benefit to Petitioner.[19] While it might qualify as a "moral" victory, a finding of discrimination simply fails to sufficiently alter a plaintiff's legal relationship with a defendant to entitle the

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[18]*Rhodes v. Stewart*, 488 U.S. 1, 4, 109 S. Ct. 202, 204 (1988); *Hewitt v. Helms*, 482 U.S. 753, 761, 107 S. Ct. 2672, 2676 (1987); *Walker v. Anderson Elec. Connectors*, 944 F.2d 841, 846-47 (11th Cir. 1991), *cert. denied*, 506 U.S. 1078, 113 S. Ct. 1043 (1993).

[19]Petitioner's Appendix A-14.

plaintiff to prevailing party status.[20] Given that Petitioner was not a prevailing party, Petitioner is not entitled to an award of attorneys' fees or court costs, and the Court of Appeals properly vacated these awards by the Trial Court.

The cases that Petitioner cites to bolster her argument clearly state that, at a minimum, the prevailing party must be able to point to a resolution that materially alters the legal relationship between her and the defendant.[21] Petitioner's only relief on her discrimination claim, the injunction, was properly vacated on appeal. However, even if the Court of Appeals had not vacated the injunctive relief, Petitioner did not receive any relief on the merits of her discrimination claim that modified Respondents' behavior in a way that directly benefitted Petitioner. Because she was no longer the Respondents' employee and did not seek reinstatement, the injunctive relief imposed by the trial court would not have

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[20]*Farrar*, 506 U.S. at 112-13, 113 S. Ct. at 573-574.

[21]*See Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782, 783, 109 S. Ct. 1486, 1493-1494 (1989); *Ruffin v. Great Dane Trailers*, 969 F.2d 989, 992 (11th Cir. 1992), *cert. den.*, 507 U.S. 910, 113 S. Ct. 1257 (1993).

provided any material relief of direct benefit to Petitioner.

This Court has further stated that a technical victory may be so insignificant that it is insufficient to support prevailing party status.[22] Here, although the jury found that the Respondents discriminated against the Petitioner on the basis of her pregnancy, it awarded her absolutely no damages for this claim. The jury's refusal to award Petitioner damages leaves her with neither a judgment to enforce against Respondents nor any mechanism through which to modify their behavior toward her. Thus, Petitioner achieved only a Pyrrhic victory which is not significant enough to render her a prevailing party within the meaning of Title VII.

The cases that Petitioner cites to support her argument that the court should award her attorneys' fees for time spent on her tort and discrimination causes of action are clearly distinguishable from this case because they involve plaintiffs that actually received

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[22]*Texas State Teachers Association*, 489 U.S. at 782, 783, 109 S. Ct. at 1493.

damages for their Title VII claims.[23] These plaintiffs were statutorily entitled to attorneys' fees for their claims. In contrast, Petitioner is *not* statutorily entitled to attorneys' fees because the jury did *not* award her any damages for her Title VII claim. In sum, Petitioner's technical victory does not entitle her to prevailing party status under Title VII.

Even if Petitioner was entitled to prevailing party status, the Court should still deny Petitioner's request for writ of certiorari because her lack of success on the merits of her Title VII could not justify an award of attorneys' fees.[24] Whether a party that achieves only minimal success is entitled to attorneys' fees depends on three factors. The most important factor is the degree of the success the plaintiff obtained as measured by the difference between the amount the plaintiff requested and the amount the plaintiff received

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[23]*See Phillips v. Smalley Maintenance Servs., Inc.*, 711 F.2d 1524 (11th Cir. 1983); *Zabkowicz v. West Bend Co., Div. Dart Indus., Inc.*, 789 F.2d 540 (7th Cir. 1986); *Mennor v. Fort Hood Nat'l Bank*, 829 F.2d 553 (5th Cir. 1987).

[24]*Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1943 (1983); *Armstrong Forest Prods. v. Redempco, Inc.*, 818 S.W.2d 446, 453 (Tex. App.—Texarkana 1991, writ denied).

in the judgment.[25] The Petitioner sought several million dollars in compensatory and punitive damages because of pregnancy discrimination and the jury awarded nothing. Because of the discrepancy between the recovery Petitioner sought and what the jury actually awarded, the only reasonable fee to award Petitioner is no fee at all.[26]

Another factor in determining whether a party is entitled to attorneys' fees is the legal importance of the lawsuit on which the party claims to have prevailed.[27] While discrimination claims are undeniably important, the fact that Petitioner only complained about her individual rights and did not claim a pattern or practice of discrimination that necessarily involved others minimizes the importance of her lawsuit.

The final factor in determining whether a prevailing party is entitled to attorneys' fees requires a consideration of the public purpose served by the litigation in the context of whether the plaintiff's victory vindicated important rights and will deter future

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[25]*Farrar*, 506 U.S. at 114, 113 S. Ct. at 574.

[26]*Farrar*, 506 U.S. at 115, 113 S. Ct. at 575.

[27]*Id.* at 121.

violations.[28] Attorneys' fees are appropriate only if the plaintiff's victory entails something more than a mere determination that the defendant violated plaintiff's rights.[29] Petitioner's suit did not vindicate important rights because it served no public purpose.[30] Petitioner brought suit only on her own behalf, alleging only violations of her rights. She did not claim to represent a class of similarly situated individuals, nor did she claim that Respondents engaged in a pattern and practice of violating the law.[31] Considering the *de minimis* nature of Petitioner's recovery compared to the relief Petitioner requested, Petitioner would be entitled to no fee even if she were considered a prevailing party.

C. THE COURT SHOULD NOT GRANT A WRIT OF CERTIORARI BECAUSE THE TEXAS COURT OF APPEALS APPLIED THE CORRECT STANDARD OF REVIEW IN DETERMINING THAT THE TRIAL COURT IMPROPERLY ISSUED A PERMANENT INJUNCTION AGAINST RESPONDENTS.

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[28] *Id.* at 121-122.

[29] *Maul v. Constan*, 23 F.3d 143, 145 (7th Cir. 1994).

[30] *Id.* at 146.

[31] *Id.* at 145.

Petitioner complains that the Court of Appeals erred by examining the record and balancing the equities to determine the propriety of an award of injunctive relief, rather than reviewing the award for abuse of discretion. This argument is fundamentally flawed in two respects. First, injunctive relief is not mandatory under Title VII and therefore balancing of the equities is perfectly appropriate. Furthermore, balancing the equities is consistent with an abuse of discretion standard of review where, as here, injunctive relief is available, but not required.[32] Second, in reviewing a trial court's ruling on a permanent injunction, a Texas appeals court may review all of the evidence to determine whether the ruling of the trial court was correct, as in any other appellate review.[33]

1. The Court Of Appeals Correctly Determined That The Trial Court Abused Its Discretion By Granting Injunctive Relief.

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[32]*See Kamberos v. GTE Automatic Elec., Inc.*, 603 F.2d 598, 603 (7th Cir. 1979), *cert. denied*, 454 U.S. 1060, 102 S. Ct. 612 (1981); *Williams v. General Foods Corp.*, 492 F.2d 399, 407 (7th Cir. 1974); *Brown v. Carroll*, 683 S.W.2d 61, 62 (Tex. App.–Tyler 1984, no writ).

[33]*See Safeguard Bus. Sys., Inc. v. Schaffer*, 822 S.W.2d 640, 644 (Tex. App.–Dallas 1991, no writ).

In determining whether the trial court abused its discretion, the appeals court must review the record on appeal to determine what information was available to and relied on by the trial court in making its decision.[34] On review of the record in this case, the appellate court found that there was no evidence of a history of discriminatory practices, no indication of future noncompliance with the law, and no need to fashion injunctive relief to make the Petitioner whole.[35] The appeals court also concluded that there was no danger of a continuing violation of the law, that neither Petitioner nor nonparties would benefit from the injunctive relief imposed by the trial court, and that such injunctive relief was unnecessary to the fair resolution of this conflict.[36]

In light of this record, the Court of Appeals determined that the trial court abused its discretion by awarding injunctive relief. Abuse of discretion exists when the reviewing court is firmly convinced that the lower court

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[34]*Landon v. Jean-Paul Budinger, Inc.*, 724 S.W.2d 931, 938 (Tex. App.—Austin 1987, no writ).

[35]Petitioner's Appendix A-14—A-15.

[36]Petitioner's Appendix A-15.

made a mistake.[37] Likewise, a trial court abuses its discretion by purporting to exercise its discretion without sufficient information upon which a rational decision may be made or by making an erroneous choice as a matter of law.[38]

The Court of Appeals properly determined that the Trial Court abused its discretion by awarding injunctive relief in the absence of evidence of past systematic discrimination or probable future discrimination. In other words, it was an abuse of discretion to issue injunctive relief where there was *no evidence* of any need for such relief, there was no continuing discriminatory practice to enjoin, and an injunction would not accomplish anything or serve any purpose. As noted above, the purpose of an injunction is to prevent future illegal acts.[39] Thus, in the absence of any evidence of probable future illegality, it was an abuse of discretion for the Trial Judge to grant injunctive relief in this case.

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[37] *Thompson v. AFL-CIO*, 74 F.3d 1492, 1509 (6th Cir. 1996).

[38] *Reyna v. Reyna*, 738 S.W.2d 772, 774-75 (Tex. App.—Austin 1987, no writ).

[39] *United States v. W.T. Grant Co.*, 345 U.S. 629, 633, 73 S. Ct. 894, 898 (1953).

Contrary to Petitioner's argument, the Court of Appeals did not substitute its judgment for that of the Trial Court nor did it opine and speculate on a matter already decided by the Trial Court. An appeals court has the authority to review the record and determine whether a trial court erred in granting injunctive relief.[40] Moreover, under the "abuse of discretion" standard, a reviewing court may reverse if, after weighing the relevant factors, it has a definite and firm conviction that the court below has committed a clear error of judgment.[41] Conversely, to uphold a grant of injunctive relief, the record must reveal sufficient facts upon which the trial judge could have rationally exercised its discretion.[42]

Here, the Court of Appeals concluded that there was no danger of a continuing violation of the law and that injunctive relief was not

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[40]*See Kamberos v. GTE Automatic Elec., Inc.*, 603 F.2d 598, 603 (7th Cir. 1979), *cert. denied*, 454 U.S. 1060, 102 S. Ct. 612 (1981); *Williams v. General Foods Corp.*, 492 F.2d 399, 407 (7th Cir. 1974); *Brown v. Carroll*, 683 S.W.2d 61, 62 (Tex. App.–Tyler 1984, no writ).

[41]*United States v. State of Wash.*, 98 F.3d 1159, 1163 (9th Cir. 1996); *Arbelovsky v. Ebasco Servs. Inc.*, 922 P.2d 225, 227 (Alaska 1996).

[42]*See Landon*, 724 S.W.2d at 938.

necessary to the fair resolution of this conflict.[43] Therefore, the Trial Judge committed a clear error of judgment, incorrectly applied the law to these facts, and abused his discretion by requiring Respondent to "institute and carry out policies and practices which will eradicate the effects of Plaintiff's past and present unlawful employment practices." (Petitioner's Appendix B-3).

Injunctive relief was not mandatory in this case, but the Trial Court had discretionary authority to grant appropriate relief. The Court of Appeals correctly held that the Trial Court erred by granting injunctive relief because there was no evidence of a pattern or practice of discrimination or evidence of a probability of future discriminatory practices. As noted above, Petitioner no longer works for Respondent and does not seek reinstatement. Moreover, Respondents no longer employ Christine Burns, Paul Kolander and Jeffrey Muir—the individuals alleged to have discriminated against Petitioner. Where neither Petitioner nor anyone else will benefit, injunctive relief is inappropriate. Consequently, the trial court's unexplained and unsupported conclusion that injunctive relief was appropriate was based on

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[43]Petitioner's Appendix A-15.

clearly erroneous factual findings and constituted an abuse of discretion, which was appropriately remedied by the Texas Appellate Court.[44]

2. Review By The Court Of Appeals Is Not Limited To An Abuse Of Discretion Standard.

Alternatively, the Texas Court of Appeals' determination in this case is correct because its review of the Trial Court's Order granting permanent injunctive relief is not limited to an abuse of discretion standard of review. As with any other review under Texas appellate procedure, the courts of appeal may review all of the evidence to determine whether the ruling of the trial court was correct.[45] Accordingly, the Court of Appeals applied the correct standard of review.

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[44]*See Hosna v. Groose*, 80 F.3d 298, 303 (8th Cir. 1996); *ACLU of New Jersey v. Black Horse Pike Reg'l Bd. Of Educ.*, 84 F.3d 1471, 1476 (3rd Cir. 1996); *United States v. Tsosie*, 92 F.3d 1037, 1041 (10th Cir. 1996).

[45]*See Safeguard Bus. Sys., Inc. v. Schaffer*, 822 S.W.2d 640, 644 (Tex. App.—Dallas 1991, no writ); *City of Mesquite v. Colthorp*, 685 S.W.2d 78, 81 (Tex. App.—Dallas 1984, writ ref'd n.r.e.); *Electronic Data Sys., Corp. v. Powell*, 524 S.W.2d 393, 395 (Tex. Civ. App.—Dallas 1975, writ ref'd n.r.e.).

CONCLUSION

For the foregoing reasons, Respondents pray that Petitioner's request for a writ of certiorari be denied.

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